HUDSON COOK

No Harm, No Foul: Statutory Violations and Consumer Harm

April 30, 2025 | Eric D. Mulligan

"No harm, no foul" is a common saying. As it turns out, that saying is sometimes true in law. An important prerequisite for a lawsuit in federal court is that the plaintiff have standing to sue. In layman's terms, a plaintiff in federal court (and in the courts of many states) must have a stake in the outcome of the case. Usually, the plaintiff demonstrates such a stake by alleging some sort of harm suffered due to the defendant's actions—harm that the court could remedy through a judgment favorable to the plaintiff. The fact that the defendant may have broken the law isn't enough. For example, I can't sue you just because I saw you run a red light. I can only sue you for running that red light if, because you ran that red light, you hit me or my car. Whether a party has suffered harm from a statutory violation is important for more than just a plaintiff's standing, though; it can also determine whether a defendant has a valid defense to a claim. Two recent cases illustrate the difference between a statutory violation that doesn't harm a plaintiff and one that does.

In one of the cases, Robert Gallagher financed his car purchase with a non-bank finance company. He made his final payment under the financing contract via an electronic funds transfer. Based on its standard practice, the finance company waited 15 days before it sent the vehicle's title to Gallagher. Gallagher brought a class action lawsuit against the finance company in Missouri state court, alleging that the 15-day "hold" policy violated Missouri law, which provides that a lienholder must release its lien within five business days after it receives payment in full, including by way of an electronic funds transfer. The finance company removed the case to federal court, and the federal trial court granted summary judgment in its favor. Gallagher appealed.

After concluding that Gallagher did not have standing (i.e., a stake in the outcome of the case), the U.S. Court of Appeals for the Eighth Circuit vacated the grant of summary judgment and instructed the federal trial court to remand the case to state court. The appellate court found that Gallagher had failed to identify an injury that was concrete and actual. The appellate court noted that a bare statutory violation is not enough to give a plaintiff standing to sue; there must be some concrete harm resulting from the violation. When assessing concreteness, courts look to whether the alleged harm has a close relationship to a harm traditionally recognized as providing a basis for a lawsuit in American courts, such as physical harm, monetary harm, or certain intangible harms. The appellate court found that Gallagher did not identify any monetary harm—like a failed effort to sell the car or use it as collateral while the finance company retained the title—or any harm to his credit rating. The appellate court then rejected Gallagher's argument that his harm was intangible in the form of clouded title or slander of title. The appellate court concluded that these types of intangible harms are not analogous to a harm traditionally recognized as providing a basis for a lawsuit, finding that the remedy in clouded title cases is purely prospective (Gallagher, by contrast, sought damages for past conduct, given that the finance company had delivered clean title by the time he sued) and that the remedy in slander of title cases requires pecuniary loss or injury resulting from the publication of a false statement that casts doubt on the ownership of property, which Gallagher had not shown.

In the other case, Alex Corray bought a van with financing from a dealership but later defaulted on his payments. The assignee of the finance contract, Paramount Auto Funding LLC, repossessed and sold the van at auction for $400, of which $150 was sent to Paramount to apply to Corray's outstanding debt. Paramount assigned the remaining debt to Cascade Collections LLC, which sued Corray in Utah state court for the deficiency. The trial court entered judgment for Cascade for over $28,000, including interest and fees. Corray appealed, arguing, among other things, that the notice of intent to sell that Paramount sent to him was deficient because it did not include a future date after which Paramount intended to dispose of the van. Therefore, Corray argued, Cascade was not entitled to seek a deficiency judgment against him. The Court of Appeals of Utah agreed with Corray that the notice was deficient, vacated the trial court's judgment, and remanded the case.

The appellate court recognized that the notice of intent to sell stated that the van would be sold at a private sale on or after the sale date listed above that statement in the notice. However, the notice included as the "sale date" the date Corray bought the van, not a repossession sale date that followed the notice. The trial court concluded that the sale date contained an error but that the notice nevertheless satisfied the statutory requirements. The appellate court, however, determined "that the inclusion of a pre-repossession date in the notice cannot satisfy the statutory requirement to include a 'time after which' the creditor intends to dispose of the repossessed collateral." The appellate court noted that the purpose of the notice is to protect the debtor by giving him the opportunity to exercise his redemption rights prior to the date of the sale. The appellate court then went on to examine what remedy exists for a consumer who did not receive a compliant notice of intent to sell. The appellate court determined that "any material deficiency in the notice provided by a creditor to a debtor regarding disposition of collateral will preclude the creditor from obtaining a deficiency judgment against the debtor."

Let's look at the differences between these two cases. In the *Gallagher* case, the plaintiff claimed that the finance company violated state law. Missouri law required a lienholder to release a lien within five business days after payment in full, but the company took 15 calendar days to release the lien. If, between five business days and 15 calendar days after Gallagher paid his debt in full, Gallagher had suffered some harm by not having the title, then he might have had a valid claim against the finance company for the delayed release. For example, suppose that he found a prospective buyer willing to pay $10,000 for the vehicle a week and a half after he paid off the contract, but the sale didn't happen because he didn't have the title. Once he had the title, he couldn't find anyone willing to pay more than $6,000. The finance company might have been liable for the $4,000 difference between what he got and what he could have received. Gallagher couldn't demonstrate any harm resulting from the delay in releasing the lien and sending him the title. The *Corray* case was different. Similar to the state law claim in the *Gallagher* case, the plaintiff claimed that Paramount violated state law, in this case by not telling Corray how much time he had to exercise his redemption right before his vehicle would be sold. However, the statutory violation arguably harmed Corray. Had Paramount given an accurate date, Corray might have been able to redeem the vehicle before Paramount sold it. Therefore, a remedy was appropriate in that case.

Some important things to note. First, the question of harm is key to the issue of a plaintiff's standing in federal court and often in state court, but it also goes the other way—it can determine whether a defendant has a defense to a plaintiff's claim. Corray probably couldn't have raised the issue of the defective disposition notice if the defect had been harmless (say, if Paramount had misspelled his name on the notice). Second, just because an error is harmless in one case doesn't mean that similar errors will be harmless. A policy of waiting longer than the law allows after payoff to release a lien and send a vehicle's certificate of title will impact a customer sooner or later, and when it does, that customer will have standing to sue. Therefore, it's a good idea to make sure that your policies comply with the law, whether or not noncompliance hurts a customer in a specific instance. That way, you won't have to rely on the legal equivalent of "no harm, no foul."

Gallagher v. Santander Consumer USA, Inc., 2025 U.S. App. LEXIS 636 (8th Cir. (E D. Mo.) January 13, 2025); *Cascade Collections LLC v. Corray*, 2025 Utah App. LEXIS 9 (Utah App. January 24, 2025).

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